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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,973	10/06/2003	Doug E. Ellis	P314572	4763

7590 09/07/2004

HUGHES LAW FIRM, PLLC  
Pacific Meridian Plaza Ste. 302  
4164 Meridian Street  
Bellingham, WA 98226-5583

EXAMINER
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SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/679,973

Applicant(s)

ELLIS, DOUG E.

Examiner

Kimberly S Smith

Art Unit

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.

### ***Specification***

2. The disclosure is objected to because of the following informalities: page 1, line 5: replace "09/809,891" with - -09/809,895- -; page 5, lines 7-8: it is unclear as to what the applicant is disclosed; page 8, line 15: replace "date" with - -state- - or similar terminology. Appropriate correction is required.

### ***Claim Objections***

3. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The independent claim recites the limitation that the granular substance is rounded and lacks angular ends. The fact that the animal does not find an inherent property of the invention comfortable does not further limit the product being claimed.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 9 recites the limitation "granular as" in line 1. There is insufficient antecedent basis for this limitation in the claim. For the basis of art related rejections, "granular as" has been construed as "the granular substance".

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Lewis, II et al., US Patent 6,276,300 B1 (Lewis).

Lewis discloses an animal litter and a method adapted to be used for animals that do not bury their elimination (specifically a dog) where the litter comprises a granular substance with a width between 6mm-12mm (column 3, lines 55-58) and having an aspect ratio between 1-1 and

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1-6 (i.e. width between .25 and .75 inches and a length between .25 and 2.0 inches) with a bulk density of above 12 lbs/ft<sup>3</sup> (column 3, lines 63-66) being substantially rounded and lacking angular ends (column 3, lines 61-62); wherein the litter is not easily discharged from a bin (column 4, lines 8-9); wherein the granular substance is free from protruding edges (seen in Figure 5 and also column 3, lines 61-62 state the pellets may be oval or oblong); wherein the litter is safe for contact with animals (i.e. as the disclosed material is used for animals, it is therefore considered to be safe for animals); wherein the granular substance is made from a short fiber cellulose waste material (i.e. recycled newspapers); wherein the bulk density is substantially between 15-50 (claim 20) and 18-25 (claim 11) lb/ft<sup>3</sup>; wherein the absorption ratio is greater than .5 and 1.0 (column 5, lines 7-10).

Regarding claims 3 and 4, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from the product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966. As Lewis anticipates the claimed product, the method of forming the product is not germane to the issue of patentability of the product itself, therefore this limitation <sup>has</sup> ~~has~~ not been given patentable weight. It is noted Lewis discloses the substance having a substantially constant cross-sectional area (reference Figures 1-5, 7).

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***Conclusion***

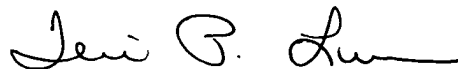
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnston (US 6,435,135), Ochi (US 6,148,768), Elazier-Davis (US 5,577,463), Dewing (US 5,209,186).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss



**TERI P. LUU**  
**SUPERVISORY PRIMARY EXAMINER**